Court of Criminal Appeal

Hon. Madame Justice Dr. Edwina Grima LL.D.

Appeal Number: 323/2015

The Police

Inspector Trevor Micallef

Vs

Justin West

Today 27th October, 2016,

The Court,

Having seen the charges brought against the the appellant Justin West holder of British Passport Number 309505937, brougth in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature and charged with having:

1. In these islands on the 16th June 2012 at about ten in the morning (10:00am) in St. Andrews Road, St. Julians and/or in the vicinity drove vehicle registration no. EBK 853 make Peugeot:
2. Through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations, caused the death of Antonio Grixti (Article 225 Chapter 9);
3. On the same date, time, place and circumstances through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations caused involuntary damages on vehicle registration no. OTT 026

of make KYMCO to the detriment of Antonio Grixti and/or other persons (Article 328(a) Chapter 9);

4. On the same date, time, place and circumstances through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations caused involuntary damages on vehicle registration no. NAO 022 make Peugeot to the detriment of Simon Grech and Josette Grech (Article 328(d) Chapter 9);
5. On the same date, time, place and circumstances through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations caused involuntary damages on vehicle registration no. EBK 853 make Peugeot to the detriment of Paolo Tanti and/or KWL Rent A Car and/or other persons (Article 328(d) Chapter 9);
6. On the same date, time, place and circumstances drove vehicle registration no. EBK 853 make Peugeot in (a): dangerous manner, (b) reckless manner, (c) negligent manner (Articles 15(1)(a), 15(2), 15(3) Chapter 65);
7. On the same date, time, place and circumstance drove or attempted to drive or was in charge of vehicle registration no. EBK 853 make Paugeot on a road or other public place when he was unfit to drive through drink or drugs (Article 15A(1) Chapter 65);
8. On the same date, time, place and circumstances drove, attempted to drive or be in charge of vehicle registration no. EBK 853 make Peugeot on a road or other public place after having consumed so much alcohol that the proportion of it in his breath, blood or urine exceeded the prescribed limit (Article 15B(1) Chapter 65);
9. On the same date, time, place and circumstances drove vehicle registration no. EBK 853 make Peugeot in an excessive speed (Article 127 L.S. 65.11).

The Prosecution requested that the accused be disqualified from holding or obtaining a driving licence for a period that the Court deems appropriate.

Having seen the judgement of the Court of Magistrates (Malta) As a Court of Crimianl Judicature of the 1st June, 2015, whereby the Court after having seen the

Articles of Law sent by the Attorney General on the 18th. of December 2013 (*a fol.* 320), mainly Articles 17, 225, 328(a) and 328(d) of Chapter 9 of the Laws of Malta, Articles 15(1)(a), 15(2), 15(3), 15A(1) and 15B(1) of Chapter 65 of the Laws of Malta, and Regulation 127 of Subsidiary Legislation 65.11 of the Laws of Malta, found the accused Justin West guilty of all the charges brought against him and condemned him to a period of two (2) years imprisonment. The Court orders that the accused be disqualified from holding or obtaining a driving licence for a period of three (3) years starting from today.

Finally, after having seen and considered Article 533 of Chapter 9 of the Laws of Malta, the Court condemned the accused to pay the amount of one thousand eight hundred and twenty one Euros and sixty six cents (€1821.66) within a period of three (3) months from today which amount represents the costs incurred in connection with the employment of experts in this case.

Having seen the appeal application of Justin West, presented in the registry of this Court on the 11th June, 2015, whereby he requested this Court to to reform the judgement given by the Court of Magistrates as a Court of Criminal Judicature on the 1st of June 2015 in the names of The Police vs Justin West per Magistrate Neville Camilleri and this by confirming that part where the accused was found guilty of the charges preferred against him and whereby the Court condemed him to pay the costs incurred in connecton with the appointment of experts in terms of article 533 of Chapter 9 of the Laws of Malta within three (3) months from the date of the judgment and to cancel and revoke that part of the judgement where the appellant was condemned to the punishment of two (2) years effective inprisonment and instead inffict a punishment which shall be more reasonable in the circumstances.

Having seen the acts of the proceedings.

Having seen the uptdated conduct sheet presented by the prosecution as requested by the Court.

Having seen the grounds of appeal as presented by appellant Justin West:

First Grievance

That in the humble opinion of the applicant, the penalty imposed on him by the Court of Magistrates (Malta), that is the three (3) year imprisonment and disqualification of obtaining or holding a licence for a period of three (3) years is harsh, excessive and unproportionate considering the circumstances surrounding the facts of the case, and this for reasons which are to be given by the applicant in this application;

That one is to underline that the applicant holds a clean conviction sheet applicant and the fact that a person died (apart from involuntarily causing damage to others' property) is a basis of an involuntary act. These factors shall be discussed together with jurisprudence further on to sustain the fact that, the Court of Magistrates (Malta) had to award different punishment that that awarded on the first (1st) of June two thousand and fifteen (2015). Another important thing is that the First Honorable Court did not even think about the possibility of a punishment punishing the applicant with a suspended sentence;

That involuntary homicide under Article 225 (1) of the Criminal Code (Chapter 9) occurs when:

Whosoever, through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations, causes the death of any person, shall, on conviction, be liable to imprisonment for a term not exceeding four years or to a fine (multa) not exceeding eleven thousand and six hundred and fortysix euro and eighty-seven cents (11,646.87)

That as being said by the above-mentioned provision, the applicable punishment in these cases is alternate, whereby either that of imprisonment not exceeding four years or to a fine (multa) which does not exceed eleven thousand, six hundred and forty-six Euro ad eighty seven cents (€11,646.87);

That from our jurisprudence on involuntary homocide, the applicants submits that the tendency of our Courts - even in circumstances which are more grave and serious from the present case, is that of inflicting a pecuniary penalty (fine, multa)

even if in the maximum as provided in our law, but rarely imprisonment. This apart from taking into consideration of a judgement which inflicts a suspended sentence;

That on this point various judgments will be mentioned, that in the case of involuntary homicide, but taking certain things into consideration, the Courts are more prone to impose fines insead of imprisonment;

That in the case Il-Pulizija (Spt. T. Mercieca) vs. Angelus Bartolo' the facts were regarding an accident which happened on the place of work where a crane was mounted on the construction site without taking the nexessary cautions as required by law and whilst operating the crane it fell on another a near construction site where a third person got hurt and as a result this person died.

The main charge brought against the accused person was (apart from others based on Chapter 424 of the Laws of Malta) in this particular case was article 225 of the Criminal Code. In this case the Court awarded a pecuniary punishment and not imprisonment)

That in the case in the names of Il-Pulizija (Spt Chris Galea Scannura) vs. Joseph Curmi the only charge brought against the accused person was article 225 of Chapter 9 of the Laws of Malta whereby there was an traffic accident and caused involuntary homicide of aother person who was driving a motor cycle. In its judgment the Court decided that he was guilty of the charges brought against him and condemned him to a fine of eight hundred Maltese Liri (Lm800) and disqualified the same person from the driving licence for a period of six (6) months;

In the judgment in the names of Il-Pulizija vs. Mario Angelo Ernest Vincent Zammit the only charge given to the accused person was article 225 of Chapter 9 of the Laws of Malta. In its decision the First Curt found the accused person guilty of the charge brought against him and condemned him a fine of three thousand Maltese Liri (Lm3,000) and disqualified him from holding a driving licence for a period of eighteen months;

That in the judgement given by Court of Magistrates (Malta) as a Court of Criminal Judicature in the names of Il-Pulizija (Superintendent Pio Pisani) vs. David

Rigglesford on the eleventh (11) ta' January of the year two thousand and seven (2007), the Court found the accused guilty of involuntarily causing the death of a swimmer by driving the jet ski in accordance of article 225 of Chapter 9 of the Laws of Malta. The punishment awarded was that of two years imprisonment suspended to two years by the application of Article 28A of the Criminal Code. One has to keep in mind that that facts of this case happened in the year two thousand and one (2001) and thus when Article 225 of Chapter 9 of the Laws of Malta used to provide for maximum of two (2) as imprisonment and not as subsequently amended by Act III of the year 2002. Therefore the Court applied the maximum imprisonment but suspended it according to Article 28 of the Criminal Code. This so to avoid that the individual, when involuntarily caused the death of another person is not awarded a very harsh penalty for what he has done;

The above-mentioned judgment was overturned by the Court of Appeal whereby the accused was awarded one thousand Maltese Liri (LM1,000); That these judgements are being referred to so that it is emphasized that on one part the active subject has to be punished by effecting a penalty which corresponds to the effects of his conduct, on the other hand the court has also to take into consideration all the events of the case so that the penalty will be according to the penalty which the the accused is to be awarded;

That in the present case it would be more correct that the appellant is subjected to a less harsher penalty which was imposed by the First Honorable Court and this for the subsequent reasons;

Firstly it is to be said that it is not the norm that where a penalty is imposed by the First Court and is in the paramenters of the law, that such penalty is disturbed, and that there is nothing to indicate that the penalty had to be less than that which was awarded. (Vide, inter alia, Il-Pulizija vs. Cohn Spiteri (13/02/2006) [Crim Appeal No: 160/2005 DS]);

This is the general principle which regulates the present matter and as pronounced by various courts. With reference eto the above-mentioned paragraph the appellant emphasis the words "mhumiex normali", "ma jkun hemm xejn x'jindika", "inqas

minn dik li tkun inghatat". The first phrase indicates that this is a generic principle and should be applied generically and consequently it offers certain exceptions in certain cases. The second case underlines the possibility that if certain factors exist from particular facts of the case thus, the Court can vary the punishement given by the first court. The third and last phrase refers to the quantum and thus implicitly it could mean that the Court in the Appeal stage can change the punishment for example from imprisonment to fine. (whereby if the fine is not paid it can be converted to imprisonment);

Also, in the judgment in the names of Il-Pulizija (Spettur Noel Cutajar) vs. Joseph Attard one can see that it is very rare for a cort in the stage of appeal to vary the penalty given by the First Court. It is done when it is evident that that Court would have awarded a penalty not contemplated in the law, or if the penalty is very harsh or unproportionate to what the accused person has committed or if the penalty is not in the parameters of the law. In the present case, the penalty inflicted on the accused by the FirstCourt is in the parameters of the law, but in the circumstances of the case it is in the humble opinion of the applicant very harsh, taking into consideration that the act was involuntarily and in no way what so ever was there an intention to hurt anyone let alone cause death, the clean conviction sheet of the applicant and taking into account that although the applicant is foreigner he adhered to all the conditions imposed on him by the First Court. Furthermore, the applicant quotes another part of the last judgement whereby the cort said: "Din il-Qorti gieli, ukoll, varjat xi piena meta tkun moralment konvinta li hekk ikun mehtieg sabiex ma tintilefx xi opportunita ghall-limti li biha jkun jista' jerga' jirritorna fit-triq it-tajba, tezi' jirriforma ruhu, jew jfieq u johrog minn xi abbuz ...";

That the applicant also refers to the judgement in the names of Ir-Repubblika ta' Malta vs. Rene sive Nazzareno Micallef where it says why there is the reason of a penalty - principally the imprisonment -:

Il-piena ghandha diversi skopijiet. Wiehed minnhom huwa sabiex jigi ripristinat it-tessut socjali li jkun gie mcarrat bil-ghemil kriminali ta' dak li jkun. Taht dan l-aspett jassumu mportanza, fost affarijiet ohra, kemm ir-rizarciment tad-dannu da parti tal-

hati kif ukoll ir-riforma tal-istess hati. Skop iehor tal-piena huwa dak li tigi protetta s-socjeta. Dan l-sikop jitwettaq kemm billi fil-kaz ta' persuni li b'ghemilhom juru li huma ta' minaccja ghas-socjeta dawn jinzammu inkarcerati u ghalhekk barra mic-cirkolazzjoni, kif ukoll billi, fil-kaz ta' reati gravi, is-sentenza tibghat messagg car li jservi ta' deterrent generali. Il-Qrati ta' gustizzja kriminali dejjem iridu jippruvaw isibu l-bilanc gust bejn dawn u diversi skopijiet ohra tal-piena.

That the analysis of this paragraph continues to indicate that the penalty given by the First Court, with due respect, was unjust and very harsh. One is to see that the applicant is not a menance to society, and there is no need for him to reform himself, there is no violence that needs to be taken care of and therefore keep confined so that he is not part of society. With regards to the message that the Criminal Courts have to pass to society, here one makes reference again to the above-mentioned judgements of Il-Pulizija (Spet J. Mercieca) vs. Angelus Bartolo u fl-Pulizija (Superintendent Pio Pisani) vs. David Rigglesford, II-Pulizia vs. Joseph Curmi u Il-Pulizija vs. Mario Angelo Ernest Vincent Zammit which all have the same subject matter that is involuntary homicide of a third party, so that it is emphasized the clear message that the Courts have sent. These are cases which do not involve effective imprisonment.

That referring to the judgement in the names of Il-Pulizija vs. Xandru Kristinu Mamo which was with regard lenocinium, but with regard to the penalty aspect the Court said that "il-fini ta' deterrent tal-piena ma ghandu qatt jigi minimizzat sa tali punt li addirittura jingieb fix-xejn; ghax dan i-aspett tal-piena ghandu bhala bazi principali tieghu il-protezzjoni tas-socjeta u s-sigurezza tac-cittadin". This is said so that it is emphasized that the penalty is an extreme measure which the Courts award to the accused to punish someone and to safeguard the community's interests by doing so. In the present case, the act is something which was not done intentionally by the accused, but an act which which produced consequences on third party due to negligent conduct;

That the appellant, furthermore feels that the First Court, with all due respect did not weigh the negligent contribution of the same victim;

In this regard, both the jurists in penal matter and also foreign courts propound that, "Lanqas ma tiswa bhala skriminanti n-negligenza kontributorfa tal-viitima, jekk ma jirrizultax li kien hemm xi att tal-vittima li kkaguna l-mewt taghha, independentement min-negligenza ta' l-imputat." (ara, inter alia, Il-Pulizija vs. Manwel Xerri (28/02/1953) [VoLXXXVII[D]~IV~1047'1]).

It is also a principle which is established in the penal field, "La colpa concorrente delta vittima dev'essere tenuta presente per la misura della pena, e influisce sempre sulla liquidazione del danno." This was also taken into consideration by our courts for example in the judgement of Il-Pulizija vs. Joseph Farrugia decided by the Court of Criminal Appeal on the 1st of June 1963 per Onor. Imhallef W. Harding';

That from the evidence brought forward it did not result that the victim was wearing a crash helmet. It was said that a crash helmet was found locked on the ground on the scene of the accident. So one asks of the victim was wearing the crash helmet would it not have still been on the victim when he fell off the quadbike? How come that the crash helmet was found locked on the ground? With all due respect the first honorable Court rested on the testimony of the witness Karla Chanelle Attard whereby she was not sure whether the victim was wearing the crash helmet or not That in this case whether the victim was wearing the crash helmet or not was not proven within reasonable doubt and every doubt should go in favour of the accused;

That the applicant is not saying that in any way he should not be found responsible but certainly for the penalty the contributory negligence is a determining factor - although the First Court did not take into account this fact;

That therefore the conduct of the victim — although not a determinate factor which caused the death, contributed to the victim's death. As said by the Court in Il-Pulizija vs. Manwel Xerri, when the court examines whether there was a contributory negligence of the victim, the Court said that, "... din hija konsiderazzjoni tal-akbar importanza, li l-gudikant ma jistax jittrazandaha bla ma jivvjola l-kriterji ii ghandhom jiggwidawh biex il-piena tkun gusta. Infatti, hija haga l-aktar cara li jehtieg li ssir distinzjoni, ghall-finijiet ta; l-irrogazzjoni tal-piena, bejn il-kaz ta' min jaghmel att perikoiuz li bih joqtol persuna ohm bia ma dik il-persuna l-

ohra tkun bl-ebda mod ikkonkorriet biex tqieghed ruhha l'dak il-perikolu, u (kun ghalhekk il-vittima inkoxjenti ta' dak l-att perikoluz, u l-kaz ta' min b'att perikoluz jikkaguna l-mewt ta' persuna li tkun volontarjament, b'ghajnejha miftuha, poggiet ruhha f'dak il-perikolu, persuna li qieghdet ruhha f'dak il-perikolu liberament, persuna ta' l-eta tad-dixxerniment, li ma kienet taht ebda obligazzjoni li tesponi ruhha....'

That for these reasons as said in the above-mentioned paragraphs with regard to the contribution of the victims - together with all the submissions of the appeal - the Court shouid vary the penalty awarded by the First Court and mitigate the same as a consequence of the contributory negligence of the victim;

To substantiate all of the above, the appellant refers to the Italian jurist Remo Pannain who sustains that:

Nella dottrina finalistica il concetto di colpa presuppone un certo disvalore della condotta, e contiene un illecito persona listico, in maniera diversa, pero, da quanto avviene per il delitto doloso. Nel delitto colposo manca una effettiva direzzione finalistica in rapporto all'evento tipico; nel delitto colposo, lo specific disvalore dell'azione non va dunque cercato nel controllo finalsitico che l'agente ha di fatto esercitato, ma in tin doveroso controllo ulteriore che egli non ha esercitato sulla sua aftivita, cioe nel difetto di un doveroso piu accurato controllo finalistico della condotta finalistica effettiva. Se io, pulendo un'arma che ritengo scarica, uccido un passante, la direzione finalistica non va riguardata in cio che ho fatto, ma in cio che ho omesso di fare, cioe nell'omissione delle cautele, l'uso delle quali avrebbe potuto evitare l'evento.

This quote states what is said on the point of negligence which is regulated by article 225 of the Criminal Code it is based on the personal conduct of the agents (illecito personalistico) and not the particular consequence that gives rise from such conduct; the agent is punished because he was not diligent and prudent in his actions and this gives rise to an act which is punishable by penal law;

The First Honorable Court said that "the Court feels that it has no alternative but to condemn the accused to an effective jail term". The penalty that can be imposed on the accused is either of imprisonment or a fine. Here the legislator intented the persons charged with such charge can be subjected to either imprisonment or fine which fine is of a substantial amount. One has to take into consideration that in the humble opinion of the applicant the penalty is too harsh considering that he has a clean conviction sheet that he has a good character, in the case of driving he has no other convictions and that he can be seen as a first time offender.

Considers,

The grievance put forward by appellant to the judgment delivered by the First Court, is limited to the punishment inflicted upon him for the charges brought against him for the involuntary homicide of Antonio Grixti brought about by a traffic accident which occurred on the 16th June 2012, amongst other charges, appellant not contesting, at this appellate stage, his responsibility for this tragic occurrence.

Now it has been constantly affirmed by local and foreign jurisprudence that a court of second instance will very rarely vary the punishment meted out in the appealed judgment and this where such punishment falls within the parameters defined by law. Therefore the function of this court of second instance is to examine the circumstances leading to the decision being subject to appeal and this to examine whether such punishment was excessive in the circumstances.

In fact appellant laments that there is a disparity between the punishment inflicted on him by the First Court and the punishment given in other similar cases where in such cases the punishment meted out was either the imposition of a fine or of a suspended term of imprisonment. He insists that his clean criminal conduct sheet and the contributory negligence of the victim who was not wearing a crash helmet at the time of the accident should have been taken into consideration by the First Court in calibrating the punishment to be inflicted on him.

In *Blackstone's Criminal Practice*, 2001 (para. D22.47 a fol. 1650) it is stated with regard to joint offenders charged with similar offences:

"*A marked difference in the sentences given to joint offenders is sometimes used as a ground of appeal by the offender receiving the heavier sentence. The approach of the Court of Appeal to such appeals has not been entirely consistent. The dominant line of authority is represented by Stroud (1977) 65 Cr App R 150. In his judgment in that case, Scarman LJ stated that disparity can never in itself be a sufficient ground of appeal - the question for the Court of Appeal is simply whether the sentence received by the appellant was wrong in principle or manifestly excessive. If it was not, the appeal should be dismissed, even though a co-offender was, in the Court of Appeal's view, treated with undue leniency. To reduce the heavier sentence would simply result in two rather than one, over-lenient penalties. As his lordship put it, 'The appellant's proposition is that where you have one wrong sentence and one right sentence, this court should produce two wrong sentences. That is a submission which this court cannot accept'. Other similar decisions include Brown [1975] Crim LR 177, Hair [1978] Crim LR 698 and Weekes (1980) 74 Cr App R 161…. However, despite the above line of authority, cases continue to occur in which the Court of Appeal seems to regard disparity as at least a factor in whether or not to allow an appeal (see, for example, Wood (1983) 5 Cr App R (S) 381). The true position may be that, if the appealed sentence was clearly in the right band, disparity with a co-offender's sentence will be disregarded and any appeal dismissed, but where a sentence was, on any view, somewhat severe, the fact that a co-offender was more leniently dealt with may tip the scales and result in a reduction.*

"*Most cases of disparity arise out of co-offenders being sentenced by different judges on different occasions. Where, however, co-offenders are dealt with together by the same judge, the court may be more willing to allow an appeal on the basis of disparity. The question then is whether the offender sentenced more heavily has been left with 'an understandable and burning sense of grievance' (Dickinson [1977] Crim LR 303). If he has, the Court of Appeal will at least consider reducing his sentence. Even so, the prime question remains one of whether the appealed sentence was in itself too severe. Thus, in Nooy (1982) 4 Cr App R (S) 308, appeals against terms of 18 months and nine months imposed on N and S at the same time as their almost equally culpable co-offenders received three months were dismissed. Lawton LJ said:*

"'There is authority for saying that if a disparity of sentence is such that appellants have a grievance, that is a factor to be taken into account. Undoubtedly, it is a factor to be taken into account, but the important factor for the court to consider is whether the sentences which were in fact passed were the right sentences.'"

Archbold, in his *Criminal Pleading, Evidence and Practice*, 2001 (para. 5-174, p. 571) similarily comments:

"Where an offender has received a sentence which is not open to criticism when considered in isolation, but which is significantly more severe than has been imposed on his accomplice, and there is no reason for the differentiation, the Court of Appeal may reduce the sentence, but only if the disparity is serious. The current formulation of the test has been stated in the form of the question: 'would right-thinking members of the public, with full knowledge of the relevant facts and circumstances, learning of this sentence consider that something had gone wrong with the administration of justice?' (per Lawton L.J. in R. v. Fawcett, 5 Cr. App.R.(S) 158 C.A.). The court will not make comparisons with sentences passed in the Crown Courts in cases unconnected with that of the appellant (see R. v. Large, 3 Cr.App.R.(S) 80, C.A.).."

That although in this case there is no accomplice to the crime, however appellant feels aggrieved by a disparity in the punishment handed down in similar cases where the Courts were more lenient than in his case. What this Court has to examine however, is whether the punishment handed down was manifestly excessive in the circumstances rather than more severe than other judgments since it is not acceptable that this Court reduces a term of imprisonment such as to create a situation where there are *"two, rather than one, over-lenient penalties"*.

This Court has examined all the circumstances revolving around this case. Accused, a person of British nationality, was driving a vehicle in a reckless manner, drunk at ten o'clock in the morning, overtaking another vehicle and this close to a cross road. The impact was so great that the quad bike which was stationery prior to impact was catapulted into the air thus causing fatal injuries to the victim, and appellant lost

control of the vehicle driven by him which careened to the other side of the road and fell down a height of three metres below street level. All these factors indicate that appellant was not only driving a vehicle under the effects of alcohol but also that for no valid and justifiable reason lost control of the vehicle the impact being so severe as to leave behind a trail of damage and destruction as evidenced in the reports filed by the forensic experts.

Now article 225 of the Criminal Code contemplates a wide range of punishment varying between a term of imprisonment of four years and the imposition of a fine not exceeding €11,646.87. Consequently it is evident that the punishment tendered by the First Court of two years imprisonment was well within the parameters of the law, taking into consideration the fact that appellant was found guilty not only of the charge relating to involuntary homicide but also of no less than another seven offences including involuntary damage to property and other traffic offences including driving under the influence of alcohol. The Court, therefore, in such circumstances has a wide choice and discretion in the application of the punishment to be imposed, keeping in mind that that punishment has to reflect the particular circumstances of each case and to the degree of criminal liability pertinent to the person accused. Also even the wording of the law gives an indication as to which punishment should be given priority in cases of involuntary killings, mentioning first and foremost a term of imprisonment and secondly the imposition of a fine thus implying that the crime of involuntary homicide is so serious as to merit imprisonment, and in other cases (not indicated by law but implied by jurisprudence) where the Court deems that attenuating circumstances exist, the imposition of a fine would be more appropriate.

"***Jigifieri l-Qorti ghandha tfittex l-uniformita fil-pieni fil-kazi li fihom il-grad ta' htija huwa ftit jew wisq simili wiehed ghall-iehor. Dan pero ma ghandux ikun bi***

pregudizzju tal-koxjenza tal-gudikant partikolari li jaghmel tajjeb jaghti hjiel ta' kif ikun wasal ghax-xorta u ghal kobor tal-piena li jinfliggi.[1]"

Now in this case the First Court outlined a serious of valid reasons which led it to impose a term of imprisonment of two years against the accused, which reasons this Court fully adheres to. Thus the grievances put forward by appellant were addressed by the First Court including his clean criminal record and the fact that there was no contributory negligence from the victims part in this case. It is futile for appellant therefore to submit in his grievances that the First Court should have taken into account the fact that the victim was not wearing a crash helmet, when this allegation was disregarded by the First Court, no appeal having been lodged by appellant as to the merits of the case and the considerations of the First Court in this regard. The Court feels that in this case the imposition of a fine or a suspended sentence will not make appellant realise the gravity of his actions wherein he wilfully decided to drive his vehicle in a dangerous and reckless fashion thus turning it into a lethal weapon, as the First Court rightly pointed out, causing irreparable harm to innocent third parties.

Therefore for the above-mentioned reasons the appeal is being rejected and the judgment of the First Court confirmed in its entirety. The time limits imposed by the First Court in its judgment are to run from today.

(ft) Edwina Grima

Judge

TRUE COPY

Franklin Calleja

Deputy Registrar

[1] The Police vs Jason Friggieri App.11/07/1995